

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CPSW No.573/2017

Date of order: 29.03.2019

Rajesh Kumar Ahlawat

v.

Rajiv Gauba and others.

Coram:

Hon'ble Mr Justice Sanjeev Kumar, Judge.

Appearance:

For the Petitioner/Appellant(s)

: Mr. Ankkesh Chandel, Advocate.

For the Respondent/applicant(s)

: Mr. L.K.Moza, CGSC.

This is a petition for initiating contempt proceedings against the respondent for delayed compliance of the judgment passed by this Court on 28th August, 2017 in SWP No.2019/2017. The operative portion of the judgment reads as under:-

“Having regard to the grievance of the petitioner and with the consensus of learned counsel on both the sides, this writ petition is admitted to hearing and disposed of by providing that respondents (competent authority) shall accord consideration to finalizing the promotion case of the petitioner expeditiously, preferably within a period of four weeks hereafter.”

In response, the respondents have filed their compliance in which they have explained the reasons for delayed consideration of the claim of the petitioner. The stand of the respondents, as reflected in paras 2 and 3 of the compliance report deserves attention and the same is reproduced hereunder:-

“2. That because of cadre review of ministerial cadre, the previous promotion rules became redundant as the post of Subedar Major which figured between the post of inspector and post of Assistant Commandant were abolished. The new rules were gazette by the government of India in August 2017. The exercise to effect promotion to the post of Assistant Commandant in respect of all the entitled incumbents was thereafter initiated.

3. That in the meanwhile Ministry of Home Affairs (MHA) intimated that matter regarding reservation in promotion, treatment of SC/ST candidates promoted on their own merit was pending in the Hon'ble Supreme Court of India in Contempt petition No.314/2016 in SLP(C) No.4831/2012. The matter had been listed before the Hon'ble Apex Court on 20.09.2017 and as directed by the Hon'ble Supreme Court the Learned Solicitor

General of India had given undertaking to the effect that till such time the main matter with contempt petition is decided, no further promotions of reserved category persons to unreserved posts will be made based on DOP&T dated 10.08.2010. The process of promotion of the petitioner and others due for consideration for promotion got stalled.”

In light of the aforesaid reply the case of the petitioners was ultimately considered by the DPC/competent authority and promotion was accorded to the petitioners along with several others vide communication No.P-VII-4/2018-Min-DA-4 dated 04.01.2019. In that view of the matter, there is no willful delay on part of the respondents to comply with the order of this Court.

Learned counsel for the petitioner submits that the respondents took two years to comply with the order of this Court, therefore, his promotion should take effect from 28th August, 2017. This is an issue, which the petitioner can agitate in appropriate proceedings. There is no direction to the respondents to consider the claim of the petitioner and grant him promotion from a particular date. The delay in considering the case of the petitioner has been well explained. Therefore, nothing more requires to be adjudicated in these proceedings.

Accordingly, this contempt petition is closed. However, it shall be open to the petitioner to raise his grievance in appropriate proceedings.

(Sanjeev Kumar)
Judge

Jammu
29.03.2019
Vinod.